

**IOWA BOARD OF EDUCATIONAL EXAMINERS**

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**IN THE MATTER OF:**

**Michael Gelsinger,**

**Respondent.**

**Case No. 17-142/19BEE0001**

**License No. 1031350**

**Order Regarding Proposed  
Decision**

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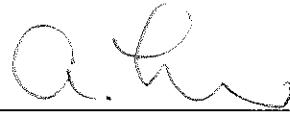
This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. A hearing took place before Administrative Law Judge David Lindgren on September 14, 2018. The Respondent did not appear for the hearing. Judge Lindgren issued a Proposed Decision on September 20, 2018. The Proposed Decision was served upon the Respondent and the Board.

At its regular meeting on October 5, 2018, the Board voted to not initiate review of the proposed decision. Neither party appealed or filed a motion to vacate within the time allowed by 282 Iowa Administrative Code rules 11.23 and 11.28.

**ORDER**

**THEREFORE**, the Proposed Decision in the matter stands as the Board's final ruling.

Dated this 22<sup>nd</sup> day of October, 2018.



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Dr. Ann Lebo, Executive Director  
On behalf of the Board

Copies to:

Michael D. Gelsinger (first-class mail and restricted certified mail)  
RESPONDENT

Allison Schmidt (electronic mail)  
ATTORNEY FOR STATE

SEP 20 2018

IOWA BOARD OF EDUCATIONAL EXAMINERS

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In the Matter of:	)	DIA No. 19BEE0001
	)	Case No. 17-142
MICHAEL GELSINGER,	)	
	)	
Respondent.	)	<b>PROPOSED DECISION</b>

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**STATEMENT OF THE CASE**

On October 2, 2017, Patrick Coen, Superintendent of the Burlington Community School District, filed a Complaint against Respondent Michael Gelsinger with the Iowa Board of Educational Examiners (the Board). The Complaint alleged that Respondent had been charged with possessing large quantities of marijuana and methamphetamine with the intent to distribute to minors.

The Board later found probable cause to proceed to hearing and issued a Notice of Hearing and Statement of Charges. In particular, it charged that Gelsinger had been convicted of a criminal offense that affects teaching performance and that he is the subject of a founded child abuse report. It also charged that he had failed to report the child abuse reports to the Board. Gelsinger has not Answered these charges.

A hearing was held on September 14, 2018 at the Wallace State Office Building in Des Moines, Iowa. The Board was represented by Assistant Attorney General Allison Schmidt. Respondent Michael Gelsinger did not appear. Dr. Ann Lebo, Executive Director of the Board, appeared but did not otherwise participate. Complainant's Exhibits 1-7 were entered into the record. Ms. Schmidt made a brief oral argument and the matter was considered fully submitted.

**FINDINGS OF FACT**

Respondent Michael Gelsinger holds an Initial Career and Technical Authorization (folder # 1031350), with endorsements for welding and building trades. His license is current and next expires on November 30, 2020. Gelsinger was employed by the Burlington School District from December of 2016 through September of 2017.

On October 2, 2017, the Board received a complaint against Gelsinger, alleging various violations. On April 10, 2018, Gelsinger pled guilty to possession of a controlled substance (methamphetamine), a serious misdemeanor in violation of Iowa Code section 124.401(5); possession of a controlled substance (marijuana), a serious misdemeanor in violation of Iowa Code section 124.401(5); and keeping a drug house, an aggravated misdemeanor in violation of Iowa Code section 124.402(1)(e). Gelsinger was granted a deferred judgment and he was placed on supervised probation for a period not to exceed two years. On June 15, 2018, the Board found probable cause to proceed to hearing.

Gelsinger was also the subject of three child abuse assessment reports issued in 2017. In particular, he was found to have committed various incidents of child abuse against his own six-year old daughter, and two sixteen-year old female runaways. Included in those assessments were findings of denial of critical care failure to provide proper supervision, dangerous substances, sexual abuse, and presence of illegal drugs. His name was placed on the child abuse registry for these incidents. Gelsinger did not report these founded abuse reports to the Board.

### **CONCLUSIONS OF LAW**

The legislature created the Board of Educational Examiners with exclusive authority to license practitioners and develop a code of professional rights and responsibilities, practices and ethics. The Board has promulgated a Code of Professional Conduct and Ethics at 282 Iowa Administrative Code Chapter 25. The standards of professional conduct and ethics promulgated by the Board require that licensees abide by all federal, state, and local laws applicable to the fulfillment of professional obligations; failure to do so constitutes unprofessional and unethical conduct which can result in disciplinary action by the Board.<sup>1</sup> Additionally, the Board has the authority to enforce its rules through revocation or suspension of a license, or by other disciplinary action against a practitioner licensed by the Board.<sup>2</sup>

In Count I, the Board alleges Gelsinger has been convicted with a criminal act that is relevant to or affects his teaching performance, and that he had been the subject of a founded child abuse report, in violation of 282 Iowa Administrative Code rule 25.3(1)(b)(2). That rule provides that it is unethical conduct, and grounds for discipline, for a licensee to commit or have a conviction for a criminal offense as defined by Iowa law provided that the offense is relevant to or affects teaching or administrative performance. That rule also provides that discipline may be appropriate if he or she is the subject of a founded child abuse report. In this case, a preponderance of the evidence supports that Gelsinger is the subject of a founded child abuse report and that he has been convicted of a criminal act that is relevant to or affects his teaching performance.

In Count II, the Board charged Gelsinger with failing to self-report to the Board within 60 days the founded child abuse reports. 282 Iowa Administrative Code 25.3(6)(k) provides that it is an unethical practice to fail to report a founded child abuse report within 60 days. Here, there is a preponderance of the evidence that Gelsinger violated this reporting requirement.

The Board requests that Gelsinger's license be permanently revoked and that he not be eligible for any further licensure by the Board. In determining the appropriate discipline, the Board is to consider<sup>3</sup>:

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<sup>1</sup> 282 Iowa Administrative Code (IAC) 25.3.

<sup>2</sup> Iowa Code § 272.2 (2017).

<sup>3</sup> 282 IAC 25.3(1)(b)(2).

1. The nature and seriousness of the crime or founded abuse in relation to the position sought;
2. The time elapsed since the crime or founded abuse was committed;
3. The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
4. The likelihood that the person will commit the same crime or abuse again;
5. The number of criminal convictions or founded abuses committed; and
6. Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

Where a violation is found, the Board has the authority to impose the following disciplinary sanctions:

1. Revoke a practitioner's license, certificate or authorization.
2. Suspend a practitioner's license, certificate or authorization until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, a practitioner from engaging in specified practices, methods, or acts.
4. Require additional education or training.
5. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
6. Issue a public letter of reprimand.
7. Order any other resolution appropriate to the circumstances of the case.<sup>4</sup>

In determining an appropriate sanction, the Board's primary concern must be the protection of students. The sanction should provide proportionate punishment for the particular violation, make provision for any necessary remedial actions, and deter other practitioners from engaging in similar behavior. In consideration of the factors noted above, it is clear that Gelsinger's violations warrant the strongest sanction possible. His license shall therefore be revoked. In addition, he shall be ineligible for any future licensure through the Iowa Board of Educational Examiners.

### **ORDER**

IT IS THEREFORE ORDERED that the license or authorization issued to Respondent Michael Gelsinger shall be permanently revoked with no possibility of reinstatement. In addition, he shall be ineligible for any future license through the Iowa Board of Educational Examiners. These sanctions shall be effective when this Proposed Decision become a final order of the Board.

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<sup>4</sup> 282 Iowa Administrative Code (IAC) 11.33.

Dated this 20th day of September, 2018.



David Lindgren  
Administrative Law Judge

cc: Michael Gelsinger (First Class Mail)  
Ann Lebo, Board of Educational Examiners (Electronic Mail)  
Allison Schmidt, AG (Electronic Mail)

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***Motion to Vacate.*** Pursuant to 282 Iowa Administrative Code 11.23(3), decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or unless an appeal of the decision on the merits is timely initiated within the time provided by rule 282 IAC 11.28. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate in the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

***Appeal on the Merits.*** Pursuant to 282 Iowa Administrative Code 11.28, any adversely affected party may appeal a proposed decision to the Board within 30 days after issuance of the proposed decision. The notice of appeal must be in writing and signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, and the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief.

**BEFORE THE BOARD OF EDUCATIONAL EXAMINERS  
OF THE STATE OF IOWA**

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In the matter of	)	Case No. 17-142
	)	Folder No. 1031350
<b>MICHAEL D. GELSINGER,</b>	)	
	)	<b>NOTICE OF HEARING</b>
Respondent.	)	<b>AND STATEMENT OF CHARGES</b>

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**YOU ARE HEREBY NOTIFIED** that the Iowa Board of Educational Examiners, exercising the jurisdiction conferred by Iowa Code chapters 17A and 272, has found probable cause of a violation of Board rules and ordered this matter scheduled for hearing.

**A. TIME, PLACE AND NATURE OF HEARING**

1. Hearing will be held on Friday, September 14, 2018, before Administrative Law Judge David Lindgren, acting on behalf of the Iowa Board of Educational Examiners. The hearing shall begin at 1:00 p.m. in Department of Inspections and Appeals, Wallace State Office Bldg, Third Floor, 502 E. 9<sup>th</sup> Street (East 9th and Grand Avenue), Des Moines, Iowa. You should report to the third floor Iowa Department of Inspections and Appeals' (DIA) receptionist prior to 1:00 p.m. to obtain the room assignment.

2. Answer. Within twenty (20) days of the date of service of this Notice of Hearing, you are required to file an Answer specifically admitting, denying, or otherwise responding to the allegations included within the Factual Allegations. In that Answer, you should also state whether you will require an adjustment of the date and time of the hearing. A copy of the Answer shall be provided by the Respondent to the Assistant Attorney General identified below.

3. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 282 Iowa Administrative Code chapter 11. At hearing, you may appear personally or be represented by an attorney, at your own expense. You will be allowed the opportunity to respond to the charges against you. Each party will be allowed to testify, examine and cross-examine witnesses, and present documentary evidence. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence. If you need to request an alternative time or date for hearing, you must comply with the requirements of 282 Iowa Administrative Code rule 11.19.

If either party wishes to present telephonic testimony or to participate in the hearing by telephone, arrangements must be made at least ten (10) days in advance of the hearing date by filing a written request with the presiding Administrative Law Judge, Department of Inspections and Appeals, Wallace State Office Building, Des Moines, Iowa 50319, or by faxing a written request to (515) 281-4477. A copy of the request for telephonic testimony must be served on the Board and all parties. Any resistance to the request for telephone testimony must be filed within five (5) days of service of the notice.

4. Pre-hearing conference. Either party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board rules regarding pre-hearing conferences are found in 282 Iowa Administrative Code rule 11.18.

5. Prosecution. The office of the Attorney General is responsible for prosecuting and representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address:

Allison Schmidt  
Assistant Attorney General  
Iowa Department of Justice  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa 50319  
Telephone (515) 281-3395

6. Communications. You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or the pending charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve on all parties in the case. You should direct any questions about this proceeding to Ann Lebo, the Board's Executive Director, at (515) 281-5849 or to Assistant Attorney General Schmidt at (515) 281-3395.

## **B. SECTIONS OF STATUTES AND RULES INVOLVED**

### **Count I**

7. Respondent is charged with commission of or conviction for a criminal offense as defined by Iowa law that is relevant to or affects teaching performance and being the subject of a founded report of child abuse, in violation of 282 Iowa Administrative Code rule 25.3(1)(b)(2).

### **Count II**

8. Respondent is charged with failing to self-report to the board within 60 days any founded child abuse report, in violation of 282 Iowa Administrative Code rule 25.3(6)(k).

## **C. JURISDICTION AND LEGAL AUTHORITY**

9. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 272. If any of the allegations against you are proven at hearing, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A and 272, and 282 Iowa Administrative Code chapter 11.

## **D. FACTUAL CIRCUMSTANCES**

10. Respondent holds an INITIAL CAREER AND TECHNICAL AUTHORIZATION (Folder No. 1031350) with the following endorsements: 5-12 Welding and 5-12 Building Trades. This license is current and will next expire on November 30, 2020. Respondent also

holds a substitute authorization, which is current and will next expire on November 30, 2021.

11. Respondent was employed by the Burlington Community School District from December 2016 to September 2017.

12. On October 2, 2017, the Board of Educational Examiners received a complaint against Respondent alleging various violations. On June 15, 2018, the Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

13. On April 10, 2018, Respondent pled guilty to Possession of a Controlled Substance (Methamphetamine), a serious misdemeanor, in violation of Iowa Code section 124.401(5), Possession of a Controlled Substance (Marijuana), a serious misdemeanor, in violation of Iowa Code section 124.401(5), and Keeping a Drug House, an aggravated misdemeanor, in violation of Iowa Code section 124.402(1)(e). On May 22, 2018, the district court granted Respondent a deferred judgment and placed him on supervised probation for a period not to exceed two years.

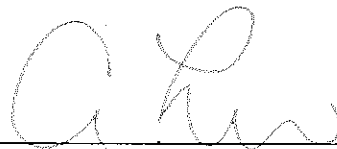
14. Investigation further revealed that Respondent was the subject of three founded child abuse reports in 2017.

15. Respondent did not report the founded child abuse reports to the Board.

#### **E. SETTLEMENT**

16. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process are found at 282 Iowa Administrative Code rule 11.4(6). If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Schmidt.

Dated this 18<sup>th</sup> day of July, 2018.



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Ann Lebo, Executive Director  
Iowa Board of Educational Examiners

Copies to:

Michael Gelsinger (first-class mail and restricted certified mail)  
RESPONDENT

Allison Schmidt (electronic mail)  
ATTORNEY FOR STATE